IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
CONTINENTAL AIRLINES, INC., et al.,	)	Case Nos. 90-932 through 90-984-MFW
Debtors.	)	
	)	Jointly Administered
JACK H. FARENGA,	)	
Appellant,	)	
v.	)	C.A. No. 02-401-SLR
JAMES BALDRIDGE, WILLIAM MANN and LARRY DUNN, individually and as representatives of a class of persons similarly situated who are referred to as LPP CLAIMANTS,	)	
Appellees.	)	

MEMORANDUM ORDER

At Wilmington this 31st day of March, 2003, having reviewed appellees' motion to dismiss the above captioned appeal and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 8) is granted, for the reasons that follow:

1. **Standard of Review.** This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's

legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991)(citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

2. **Background.** The underlying dispute has a long and convoluted procedural history. On February 23, 1986, Eastern Airline ("Eastern") and its pilots' union, the Air Lines Pilot Association ("ALPA"), ratified a collective bargaining agreement. On February 24, 1986, Texas Air Corporation, the parent of Continental Airlines, Inc. ("Continental"), acquired Eastern. ALPA asserted that the acquisition was a merger requiring integration of the Eastern and Continental pilots' seniority lists under Eastern's collective bargaining agreement. When

Eastern and Continental refused to bargain with ALPA on the issue, ALPA initiated arbitration.

3. In March 1989, Eastern filed for protection under chapter 11 of the Bankruptcy Code and asserted that the automatic stay precluded ALPA from proceeding with the arbitration. After protracted litigation, the Court of Appeals for the Second Circuit held that the automatic stay did not preclude arbitration. In re Ionosphere Clubs, Inc., 922 F.2d 984 (2d Cir. 1990). ALPA and Eastern thereafter proceeded with arbitration, during which ALPA sought prospective integration of the Eastern and Continental pilots' seniority lists and back pay until the integration was completed.

4. Continental filed for protection under chapter 11 of the Bankruptcy Code in December 1990. ALPA (and certain individual Eastern pilots) filed unliquidated proofs of claim in that proceeding. Continental filed objections and sought a declaration that the claims were general unsecured prepetition dischargeable claims compensable by an award of monetary damages. ALPA disagreed and asserted that the pilots were entitled to specific performance of the collective bargaining agreement, namely, seniority integration. In addition, ALPA asserted that only the arbitrator had jurisdiction to determine whether a merger had occurred as defined by the collective bargaining

agreement.[1]

5. The United States Court of Appeals for the Third Circuit ultimately held "that any claim based on an award of seniority integration arising out of the resolution of the [labor arbitration] dispute will be treated as a claim in bankruptcy giving rise to a right of payment. As such, the right to seniority integration is satisfiable by the payment of money damages." In re Continental Airlines, 125 F.3d 120, 136 (3d Cir. 1997). The Third Circuit prefaced its holding with the following language:

> We take care to note the boundaries of our holding. It is not our purpose to suggest the award the arbitrator should grant, if an award is warranted upon disposition of the [labor arbitration] dispute. Our holding is limited to how the claims should be treated in bankruptcy.

Id. at 136. In other words, the Third Circuit, in its 1997 decision, determined the proper forum (arbitration) for resolution of the pilots' substantive rights (whether they have seniority integration rights), while maintaining the bankruptcy court's jurisdiction to determine the "manner in which the

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[1]On October 12, 1999, James Baldridge, William Mann and Larry Dunn, individually and as the representatives of a number of former Eastern pilots (referred to as the "LPP Claimants" since 1991), filed an adversary proceeding against Continental. By order dated February 3, 2000 and amended July 10, 2001, the bankruptcy court certified a non-opt out class that included appellant (the "Baldridge LPP Class"). Appellant did not object to entry of the class certification order nor did he seek an appeal from that order.

[claims] in bankruptcy would be treated if a right to seniority integration is established." Id. at 131, n. 8.[2]

6. By order dated October 12, 2000, the bankruptcy court granted summary judgment to Continental, finding that, if the Eastern pilots established their right to seniority integration in arbitration, each of the pilots' claims would be treated as a general unsecured prepetition claim and that the value of each such claim for payment purposes would be limited to one year's wages pursuant to Rule 502(b)(7). (Bk. Case No. 90-932, D.I. 46)

7. Although appellant did not file an individual appeal from that order, an appeal from this order was filed by the "Baldridge LPP Class Action" plaintiffs.

8. On or about November 26, 2001, a settlement notice was sent to each member of the "Baldridge LPP Class," including appellant. (D.I. 1, attachment at Ex. A) After a hearing, the bankruptcy court entered an order on January 31, 2002 (the "Settlement Order") approving a settlement (the "Settlement Agreement") between the Baldridge LPP Class (appellees herein)

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[2]Despite the Third Circuit's ruling, a group of dissatisfied Eastern pilots thereafter filed a lawsuit in the United States District Court for the District of New Jersey seeking enforcement of their collective bargaining rights outside the arbitration proceeding. That lawsuit was transferred to this court and thereafter dismissed. Eastern Pilots Merger Committee v. Continental Airlines, C.A. No. 99-795-SLR (D. Del. September 12, 2000), aff'd, 279 F.3d 226 (3d Cir. 2002), cert. denied, __ U.S. __, 123 S. Ct. 345 (2002).

and Continental, whereby:

a. The bankruptcy court dismissed "on the merits with prejudice. . . any and all claims, actions, requests for relief or causes of action alleged in the Baldrige class action complaint by plaintiffs and the members of the class as to all Defendants." (D.I. 1, attachment at Ex. A, ¶ 5)

b. The Class Representatives "shall be deemed to have released and forever discharged each and every Settled Claim which they, or any of them had, may have had, now have or have as of the Effective Date of the Settlement against the Released Parties." (Id. at ¶ 6)

c. Class Counsel, on behalf of the Class Representatives and the Class, "shall file a dismissal with the clerk of the United States District Court for the District of Delaware of the Baldridge LPP Class Action plaintiffs' pending appeal of the October 12, 2000 Order and Opinion of [the bankruptcy court]. (Id. at ¶ 7)

d. Class counsel, on behalf of the Class Representatives and the Class, "shall withdraw its Demand for LPP Arbitration filed with the National Mediation Board in March 1998." (Id. at ¶ 8)

e. "[T]he Class Representatives and all of the Members of the Class and anyone claiming through any of them will be forever barred and enjoined from commencing, instituting or

prosecuting any action or other proceeding in any court of law or equity, arbitration tribunal or administrative or other forum directly, representatively or derivatively against any of the Released Parties as to any of the Settled Claims." (Id. at ¶ 9)

f. As the court understands the terms of the settlement, the Class members should receive under the settlement "a claim value two to three and one-half times one year's wages. . . ." (D.I. 29 at ¶ 3)

9. **Mootness**. The appeal is moot, given the withdrawal of the pending appeals and the distribution of consideration to class members, acts in furtherance of the settlement which cannot be undone.

10. **Timeliness**. The bankruptcy court entered its final judgment and order of dismissal on January 31, 2002. The deadline for a notice of appeal from the settlement order was Monday, February 11, 2002, pursuant to Rule 8002 of the Federal Rules of Bankruptcy Procedure. Appellant filed his notice of appeal on February 28, 2002.

11. **Failure to prosecute**. Appellant has failed to file any substantive response to appellees' motion to dismiss or to otherwise move the appeal forward.[3]

[3]Appellant responded with a form letter (D.I. 10) that states that appellant "filed as a joinder to Mr. O'Neill and/or Mr. Adams appeal. I'm still interested in pursuing this appeal."

12. **Conclusion.** For the reasons stated above, the motion to dismiss is granted; the January 31, 2002 Settlement Order of the bankruptcy court is affirmed and the appeal dismissed.

Sue L. Robinson
United States District Judge